

enzymes but they are distinct because the enzyme product can be made by other and materially distinct processes, such as purification from a natural source.

There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The invention must be independent or distinct as claimed; and (B) There must be a serious burden on the examiner if restriction is required.

Applicants believe that searching for both the sequences and the enzymes is not a serious burden since the enzymes are encoded by the sequences.

Regarding the relation between Groups I and IV the examiner states that they are distinct because they are distinct for the reasons noted above between the nucleotide sequences and enzymes. Since applicants believe Groups I and II are not distinct, Groups I and IV also are not distinct.

The rest of the examiner's arguments hinge on the examiner's belief that search of more than one class/subclass in a single application is considered unduly burdensome on the Office. For example, the examiner states, regarding Groups I and VI: "... restriction for examination purposes as indicated is proper since the search of more than one class/subclass in a single application is considered unduly burdensome on the Office." (Page 4, second first paragraph, 10/18/02, Restriction Requirement) In contrast, the Board of Appeals states that "Separate classification is not necessarily controlling on the question of division (restriction)." *Ex parte Musselman*, 94 USPQ 212, 213 (PO Bd. App. 1949). Also, "The fact that various groups of compounds (within the scope of a Markush claim) are classified in different subclasses does not mean that

it would be repugnant to accepted principles of scientific classification to associate them together as a genus." *Ex parte Brounard, Leroy and Stitot*, 201 USPQ 538, 540 (PTO Bd. App. 1976).

All of the claims are directed to aspects of a specific invention: a new class of enzymes in the biosynthetic pathway for the production of triacylglycerol and recombinant DNA molecules encoding these enzymes.

In view of the foregoing remarks applicants respectfully request withdrawal of the restriction requirement.

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Respectfully submitted,

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